

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 50

(Senator Middleton)

Finance

Appropriations

Governor's Appointments Office and Appointing Authorities - Duties

This bill prohibits the Governor's Appointments Office from directing or overruling an appointing authority, the Secretary of Budget and Management, or any unit in that department regarding a decision to appoint, promote, transfer, reassign, discipline, or terminate an employee under the appointing authority's jurisdiction. The bill specifies that only an appointing authority may delegate authority to act on its behalf, but only to an employee or officer under his/her jurisdiction. An appointing authority may not delegate the authority to make the final decision on the termination of an employee.

The bill takes effect June 1, 2007.

Fiscal Summary

State Effect: The bill's provisions would not materially impact State finances.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law: The State Personnel Management System (SPMS) is the personnel system governing the largest number of Executive Branch employees. Unless specified otherwise (*e.g.*, positions covered by independent salary setting authority), all regular positions in the Executive Branch are included in this personnel system. Management of SPMS falls under the authority of the Secretary of Budget and Management; however, several agencies have been given the authority to establish their own personnel systems

independent of SPMS and the Secretary. Most notably, the State's higher education institutions and the Maryland Department of Transportation operate independent personnel systems.

Since SPMS is under the authority of the Secretary of Budget and Management, the Secretary has a number of specified powers and duties regarding its operation. For example, the Secretary may determine whether a position performs a significant policy role or provides direct support to a member of the executive service, for the purposes of determining whether a position would be classified as a special appointment. Moreover, the Secretary also has the authority to resolve, with a binding settlement, a grievance appealed by an employee and to determine whether the principal unit employing the grievant will accept a settlement.

Powers of an Appointing Authority

For the purposes of Division I of the State Personnel and Pensions Article, "appointing authority" means an individual or unit of government that has the power to make appointments and terminate employment. An appointing authority within SPMS is authorized to take any personnel action consistent with the provisions of Division I of the State Personnel and Pensions Article and the regulations, guidelines, policies, and procedures adopted under it. Moreover, an appointing authority is required to cooperate with the Secretary of Budget and Management to ensure that Division I is properly enforced. Division I of the State Personnel and Pensions Article generally sets forth provisions governing State personnel.

Regulations provide that pursuant to the State Personnel and Pensions Article, the Annotated Code, and any personnel policies issued accordingly, an appointing authority, head of a principal unit, and management have exclusive authority to:

- appoint, promote, transfer, reassign, discipline, and terminate employees under the appointing authority's jurisdiction;
- direct and assign work;
- determine and redetermine, within the scope of budgetary limitations, the methods, means, personnel, and funding necessary to maintain efficient and effective government operations and properly effectuate the mission and objectives of the appointing authority's agency;
- assign each nontemporary employee to a position within a class and service designated by the Secretary of Budget and Management; and
- delegate, in writing, the authority to act on the appointing authority's behalf to any other employee or officer under the appointing authority's jurisdiction.

Regulations further provide that, unless otherwise provided by law, an appointing authority may not delegate the authority to make the final decision regarding disciplinary termination of a nontemporary employee. An appointing authority must notify the Secretary of Budget and Management of any delegation of authority by providing a copy of the delegation.

Background: During the 2005 interim, the Legislative Policy Committee appointed a Special Committee on State Employee Rights and Protections to examine numerous matters regarding SPMS and terminations and separations of at-will employees. In the fall of 2006, the committee concluded its proceedings and issued a final report including the following recommendations for changes to the State's personnel systems:

- Clarify the law to emphasize that only the lawfully designated appointing authority of a State employee may terminate that employee.
- Implement management service reforms including providing additional protection to employees in the management service up to a certain grade level, but not to the full extent of protections afforded to skilled or professional service employees; requiring that personnel actions for management service employees be made without regard to the employee's political affiliation, belief, or opinion or *any other nonmerit factor*; requiring the appointing authority to give a terminated management service employee the reason for the termination; and in the appeals process, placing the burden on the employee to prove that the reason was arbitrary, capricious, illegal, or in violation of the employee's constitutional rights.
- Implement special appointment reforms including clarifying which special appointments are patronage positions and requiring that employees be notified of that status; and requiring personnel actions for special appointments be made without regard to the employee's political affiliation, belief, or opinion unless the Secretary of Budget and Management has determined, pursuant to controlling case law, that the position is a patronage position.
- Clarify the law so that illegal political terminations include a termination to create a position for a new employee based on the new employee's political affiliation, belief, or opinion.
- Create a private right of action in State court for political firings in violation of State law and Article 40 of the Maryland Declaration of Rights that would provide for damages and attorneys' fees and would not require exhaustion of administrative remedies.

- Provide that State employees be notified in writing of their classification and the rights pertaining to it when they are hired and if their classification changes.
- Consider a legislative study of the number of at-will management service employees and the rationale for having entire departments or substantial parts of them designated “at-will.”
- Consider requiring the Department of Budget and Management (DBM) to report to the General Assembly on the designation of positions as special appointments.
- Clarify the law to state that neither the Governor’s Office nor the Governor’s Appointments Office may utilize DBM to effectuate separations; and separate the function of the Director of the Office of Personnel Services and Benefits from the appointment activity of the Governor’s Office or the Governor’s Appointments Office.
- Consider implementing certain retirement options, including restoring the pension benefit to at-will employees terminated after 16 years of service for no cause and allowing employees who are terminated without cause to buy additional time in service to qualify for the State’s retirement program.

Additional Information

Prior Introductions: SB 1068 of 2006, a similar bill, passed the Senate. The bill was assigned to the House Appropriations Committee, but no further action was taken.

Cross File: HB 161 (The Speaker, *et al.*) – Appropriations.

Information Source(s): Governor’s Office, Maryland Department of Transportation, Department of Budget and Management, Department of Legislative Services

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